

REMARKS/ARGUMENTS

The Applicants originally submitted Claims 1-23 in the application. In previous responses, the Applicants amended Claims 1, 6, 11, 16, and 21. In the present response, the Applicants have not amended, canceled, or added any claims. Accordingly, Claims 1-23 are currently pending in the application.

I. Rejection of Claims 1-23 under 35 U.S.C. §103

The Examiner rejected Claims 1-23 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Application Publication No. 2002/0102978 by Yahagi (hereinafter "Yahagi") in view of U.S. Patent Application Publication No. 2004/0203959 by Coombes (hereinafter "Coombes") for Claims 1, 2, 5, 6, 8-12, 15, 16 and 18-23; Yahagi and Coombes as applied to Claims 1, 2, 5, 6, 8-12, 15, 16 and 18-23 above, and further in view of and U.S. Patent Application Publication No. 2002/0087674 by Guilford, *et al.* (hereinafter "Guilford") for Claims 3-4 and 13-14; and Yahagi and Coombes as applied to Claims 1, 2, 5, 6, 8-12, 15, 16 and 18-23 above, and further in view of U.S. Patent Application Publication No. 2004/0009751 by Michaelis, *et al.* (hereinafter "Michaelis") for Claims 7 and 17. The Applicants respectfully disagree since the cited combination of the cited portions of Yahagi and Coombes does not teach or suggest evaluating different candidate wireless communication networks based on a quality parameter determined by a real-time calculation of a time needed for a data transfer between a mobile communication device and a communication server associated with each candidate wireless communication network that is unique to each transfer as recited in independent Claims 1, 11, and 21.

The Examiner recognizes that Yahagi does not explicitly teach a quality parameter determined by calculating a time needed for each data transfer and cites paragraph [0035] of Coombes to cure this deficiency of Yahagi. The Examiner asserts that paragraph [0035] of Coombes teaches determining a fetch response time that is an average fetch response time updated for every fetch request. (See Examiner's Action of July 24, 2008, page 3.) Paragraph [0035] of Coombes teaches a pre-fetch controller 408 determines when it is time to send a request to a wireless messaging system controller 102 to fetch an additional portion of message information being displayed on a display screen 208 of a wireless device 200. To determine when it is time to send the request for the additional portion of a message, the pre-fetch controller 408, in operation with a timer module 438, calculates a cumulative average fetch response time which is updated for every fetch request and stores the cumulative average fetch response time in a message fetch response time 414 parameter in data memory 406. Paragraph [0036] of Coombes further teaches when a calculated amount of time for the remaining message information stored in message memory 418 is less than or equal to the average message fetch response time 414 parameter, the pre-fetch controller 408 requests another portion of message from a wireless messaging server 412.

Thus, paragraphs [0035]-[0036] of Coombes teach a pre-fetch controller calculates a cumulative average fetch response time every time a fetch is requested and requests an additional portion of a message if an approximate amount of time remaining for message information to be displayed is less than or equal to the calculated cumulative average fetch response time. As such, the cited portion of Coombes does not teach a quality parameter determined by a real-time calculation of a time needed for each data transfer. On the contrary, the cited portion of Coombes teaches

determining a time to make a request for an additional portion of a message by a real-time calculation of an average time used to fetch information.

As such, the cited portion of Coombes, as relied upon by the Examiner, does not cure the Examiner recognized deficiency of Yahagi as asserted by the Examiner and, therefore, the cited combination of the cited portions of Yahagi and Coombes does not establish a *prima facie* case of obviousness of independent Claims 1, 11, and 21 and Claims that depend thereon. Neither Guilford nor Michaelis has been cited to cure the above-noted deficiencies of Yahagi and Coombes but to teach GSM/UMTS/GPRS/EDGE standards and a quality parameter of communication drops, respectively. Thus, the cited combination of the cited portions of Yahagi and Coombes in combination with either Guilford or Michaelis does not provide a *prima facie* case of obviousness for independent Claims 1, 11, and 21 and Claims that depend thereon. Accordingly, the Applicants respectfully request the Examiner to withdraw the §103(a) rejection of Claims 1-23 and allow issuance thereof.

II. Conclusion

In view of the foregoing remarks, the Applicants now see all of the Claims currently pending in this application to be in condition for allowance and therefore earnestly solicit a Notice of Allowance for Claims 1-23.

The Applicants request the Examiner to telephone the undersigned agent of record at (972) 480-8800 if such would further or expedite the prosecution of the present application. The Commissioner is hereby authorized to charge any fees, credits or overpayments to Deposit Account 08-2395.

Respectfully submitted,

HITT GAINES, PC

A handwritten signature in black ink that reads "Steven J. Hanke". The signature is written in a cursive, flowing style.

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